COUNCIL AGENDA: 4/18/2006

ITEM: 4.5



Memorandum

TO: HONORABLE MAYOR AND

CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: ISLAND ANNEXATIONS

DATE: April 12, 2006

Approved

Kay Winer

Date

4/14/06

COUNCIL DISTRICT: Citywide

RECOMMENDATIONS

Provide direction to City staff to proceed with the County island annexation process, and specifically to:

- 1. Direct City staff to prepare initiation of the annexation of unincorporated islands under the provisions of California Government Code Section 56375.3 and refer related costs to the budget process for yearly appropriations (Alternative 3).
- 2. Request that the County provide the necessary mapping, legal descriptions, Surveyor's and Assessor's Reports as a part of the annexation process.
- 3. Direct staff to initiate the necessary prezonings for the parcels within the areas proposed for annexation and complete the related environmental review.
- 4. Request that the County provide street improvements of the pockets pursuant to the County offer of July 6, 2005.

EXECUTIVE SUMMARY

Staff is seeking direction from the City Council to proceed with the annexation (and prezoning) of unincorporated islands, starting with those of up to 150-acres, within the City of San Jose Urban Service Area. This effort is in response to recent changes in State law regarding a streamlined LAFCO process that is intended to facilitate the annexation of unincorporated pockets of up to 150-acres by surrounding jurisdictions that can generally provide urban services in a more efficient manner. Annexation of all the pockets could be accomplished in a 5 year timeframe if funding is available and State law is amended to include larger pockets in the streamlined LAFCO process.

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OUTCOME

Annexation of the County islands will provide a number of benefits to both the City and the County residents and property owners within the islands, although some property owners and residents have not been supportive of annexations in the past because of concerns over potential increases in their fees, charges, taxes and development standards under City jurisdiction. With the streamlined process now in effect, and a commitment from the County to facilitate annexations as described above, the annexation process would be more timely, and considerably less expensive, than in the past or if the City undertook these annexations after the streamlining provisions sunset (which, at this point and unless legislation is enacted to extend these provisions, is January 1, 2007).

The City has an important opportunity to annex County islands through the streamlined process. Staff recommends that the Council direct staff to proceed with the initiation of an outreach process, prezoning and annexation of the eligible islands. Staff has prepared a recommended prioritization of the islands to be annexed.

BACKGROUND

The purpose of this memorandum is to provide information to the City Council about the opportunities for annexation of County "islands" (unincorporated areas that are entirely or predominantly surrounded by annexed territory of City of San José). Annexation signifies the acceptance by the City of the responsibilities to provide the wide range of necessary municipal facilities and services.

The existence of these islands results in gaps in infrastructure and inefficiencies in the delivery of urban services such as police and fire protection. In addition, the City of San José does not receive tax revenue from property in these unincorporated pockets whose residents utilize City facilities such as roads, sidewalks, libraries, parks, and community centers. Incorporation of these islands will result in a more equitable distribution of costs amongst all residents who benefit from City services and facilities. In addition, annexation furthers the policy of the County of Santa Clara that urban development should occur within cities and unincorporated pockets should be eventually be annexed.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("CKH") is the state law governing annexations. In order to further facilitate the annexation of County islands, the CKH was revised on January 1, 2005 [(Senate Bill 1266)] to increase the allowable size for unincorporated islands (from 75 to 150- acres) that can utilize an expedited annexation approval process. This process is faster as it does not include the requirement that the Local Agency Formation Committee (LAFCO) hold protest proceedings or elections that might otherwise be required. Islands may be annexed after the City holds a public hearing to decide whether to annex the area, even if some or all of the residents of the area are in opposition. This provision for the

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expedited process expires on January 1, 2007; therefore, there is only a small window of opportunity to annex these areas and address inefficiencies in the delivery of urban services.

The Local Agency Formation Commission (LAFCO) has identified a total of 77 "islands" within the San Jose Urban Service Area, with eight (8) exceeding the 150-acre threshold for this expedited annexation process. Staff is proposing that the City take advantage of this expedited process by initiating annexation of a number of the remaining 69 islands by the end of 2006. Staff recommends that these be processed in several groups. This process includes the initiation by the Planning Director of the prezoning of each property with a zoning designation that conforms with the General Plan Land Use/Transportation Diagram designation for each area. The island annexations and prezonings are anticipated to be covered by the San Jose 2020 General Plan Environmental Impact Report as the areas are proposed to be zoned in accordance with the existing General Plan designation of the property.

This report provides information about the City's effort under this new legislation, the costs and benefits of annexation, and asks for Council direction as to whether staff should proceed with the annexation process for approximately unincorporated islands.

ANALYSIS

Bernard Street

There are four main areas of costs associated with the annexation of the remaining County pockets into the City. These include the cost to prepare the annexations for approval, revenue sharing, costs to provide on-going services to the newly annexed areas, and the one time costs to bring these areas up to City standards for public improvements.

Annexation Processing Costs

County staff has indicated that they have allocated sufficient funds to cover their staff work to achieve annexation of all the eligible islands. The County has agreed to waive the usual County map preparation and review costs of \$2,000 plus staff time at \$115/hour, and the Assessor's fee, for annexations meeting the criteria. The caveat is that the County will only cover the costs for *completed* island annexations completed by December 31, 2006. In the event that any particular annexation is not completed, the City of San Jose will be billed for the related costs incurred by the County. It is not clear what capacity the County staff has to process the anticipated large group of annexations expected to be submitted at the end of the year by all the cities in the County. This is important as the City controls the annexation process initially, but then delivers the application to the County staff to complete.

The County agreed in a letter dated July 6, 2005 (attached) agreed to waive its fees for preparing the surveyor's maps, legal description, and the assessor's report, will also pay the State Board of Equalization fees. All these costs would typically be borne by a private applicant or the annexing city. LAFCO has also agreed to waive certain fees to facilitate the annexation of the pockets.

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The fiscal impact of processing annexations this year on the City's resources consists primarily of the cost of additional staff time (predominantly Planning and Public Works) to process the prezonings/annexations and the costs associated with public notification, community meetings, and preparing public information brochures per the City's Public Outreach Policy. Should annexations extend past the end of 2006, the City would incur the above costs customarily charged by the County departments unless a similar agreement could be reached with the County for essentially both agencies to share the costs of annexing the remaining pockets.

Staff has developed a work plan with four main phases to accomplish the annexation of the pockets of less than 150 acres. Staff estimated that the equivalent of 3 Planners and 1 Office Specialist position would be required to process all 69 of the County pockets of less than 150 acres in area. Additionally, approximately \$113,000 of non-personal funding would be required to pay for costs of mailing, printing annexation guides for residents and other outreach costs. The Public Works Department would require approximately \$150,000 to prepare the legal descriptions for the prezonings. A similar amount would be required to contract with private engineering firms for this work if City staff was unavailable.

The desire to accomplish the annexations in as compact timeframe as possible adds to the costs as there is little ability to fit the annexations in among the regular development projects. To complete the annexations by the end of the year would require that overstrength or contractual positions be added immediately so that staff could proceed with initiating prezonings, starting the outreach efforts, updating the *Property Owner's Annexation Answer Book*, and setting annexation hearing dates. Costs for these positions assuming the annexations were to be completed by the end of the year would be \$276,000.

Discussions with the County have also included annexing the larger than 150 acre pockets. No estimates of the costs in staff and non personal funding has been made to date to annex these other larger pockets into the City, but those costs would be substantial based on the experience with the Buena Vista annexation effort several years ago. That annexation required an election and substantial staff work at community meetings and working with the neighborhood groups. Before any efforts were made to annex these larger pockets, staff would prepare a work plan and bring that before the Council for consideration.

Revenue Sharing

As the pockets are annexed into the City, some revenues that previously went to the County will come to the City to pay for the costs of providing services to these areas. Examples that would be redistributed following annexation would include property and sales taxes. Property tax distributions following annexation are subject to negotiation between the County and the City and are documented in a tax sharing agreement. The City has an agreement with the County dating back to 1979. Recent state law changes acknowledge the tax sharing agreements and the need for revenues to be evenly distributed following annexation

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Once pockets are annexed into the City, City property and parcel taxes will begin to apply to the newly annexed areas. Also applying to these areas will be the City Business License tax, the different construction and property transfer taxes, and other taxes that customarily apply elsewhere in the City. It remains an open question as to whether any Proposition 218 issues could be raised in connection with an annexation resulting in the imposition of existing property taxes, fees and charges in the annexing jurisdiction that are higher than those charged in the former jurisdiction.

On-Going Service Costs

The impact of annexation of County pockets to the City would include operational costs to provide direct services to the new areas such as emergency services provided by the Police and Fire Departments, demands by residents and businesses for street maintenance, code enforcement, recreational and library services. Currently, the Fire Department receives in excess of four million dollars, which is the combined taxes and additional state "bailout funds" for fire services from the Central Fire District for approximately 14,300 County parcels to provide full-service fire protection services in some of the County pockets. From the initial review of Fire Department staff, it appears that the amount of funds received by the City are those funds collected by the Fire District for those areas served from property taxes and therefore should remain unchanged as a result of the annexation.

The Police Department is reviewing call volumes adjacent to the largest of the 69 pockets of less than 150 acres to estimate the impact to their patrol services. Several of the pockets along White Road are in areas with some of the highest call volumes in the City. Adding approximately 400 acres of additional housing would be anticipated to add significantly to the call volume for those areas of the City as calls are shifted from the Sheriff's Office and California Highway Patrol to the City Police staff. The initial estimate is that these new areas would add the need for resources equivalent to a new police district and the addition of 36 officers and 5 non-sworn support staff to serve the annexed areas.

Demands for services from other operating departments would be anticipated to increase as a result of the annexations. These would include Department of Transportation for street and sewer maintenance, traffic calming and parking enforcement, and Code Enforcement for private property enforcement. Other departments, such as Library and Parks and Recreation, will have increased demands, but in many cases are already forced to serve the residents of these pockets in current City facilities due to the near total lack of services in these immediate areas provided by the County. Calls for service in these new areas would be added to current services call volumes and thus would have a citywide impact on service levels without commensurate increases in staff resources. Staff is attempting to quantify the added costs associated with the annexation effort, but does not have that information at this time.

Public Improvement Costs

There are significant potential costs to fund capital improvements that City residents receive, but the County never required at the time of development nor provided through its Capital Improvement budget process. The majority of the County pockets are absent adequate storm

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sewers, curb, gutter and sidewalks, street lighting, parks, community centers and libraries. If annexed into the City, these improvements would be added to the various lists utilized by the City staff to prioritize new Capital Improvement Budget priorities.

County Executive Pete Kutras in a letter to Del Borgsdorf dated July 6, 2005 stated that "With regard to road improvements, the intent is for the work to be done after annexation. City public works directors should work with County Roads Departments to determine how this will be accomplished." The County staff has not been in communication with the Department of Transportation on what this funding would include, nor has the City obtained from the County a roadway inventory of the road conditions.

In the past, residents of the County pockets when annexed to the City have requested that their public improvements be upgraded despite no added revenues other than the yearly property taxes from the pocket. As there is little funding for such improvements, it can be anticipated that the City will face even greater challenges in funding upgrades to the public infrastructure Citywide. The amount of these financial costs for all the pockets has not been quantified to date, by neither the County nor City staff. Department of Transportation staff has reviewed the first 16 pockets proposed for annexation and determined that three will require significant investments, and three more will require minor investments. The remaining 10 initial areas to be annexed are already served by City streets, or are of such a minor size that no measurable budget impact would be assumed. To assess the infrastructure needs for streets and sidewalks for the remaining pockets to be annexed, the Department of Transportation staff has estimated that one additional FTE would be required.

Other Issues

A recent issue has arisen related to the ownership of the sanitary sewer capacity of special districts when the City annexes pockets. In the past, the City has been using the City's share of the Water Pollution Control Plant capacity to serve the newly annexed areas. Where those areas are vacant, that is a reasonable approach. Where those areas are predominately developed; the capacity of the special district does not appear to be getting credited to the City. Staff is investigating this issue to provide additional information to the Council.

Neighbors in some of the pockets have also asked staff about the inclusion of those pockets into the Strong Neighborhood Initiative Redevelopment Area boundaries such as the Buena Vista neighborhood. The question was would approval of the annexation automatically include those areas into a redevelopment area. The City Attorneys Office has previously determined that the annexation of lands does not automatically incorporate properties into redevelopment areas. To include newly annexed properties into a redevelopment area triggers the same requirements as expanding the redevelopment area currently. Findings of blight need to be made of for the added areas, providing legal notice to the entire merged redevelopment area, etc. which would be anticipated to create new opportunities for challenge to the redevelopment area expansion.

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ALTERNATIVES

Staff has identified five alternatives available for the Council to consider for a pocket annexation program that provide choice in speed, annexation cost, and operating costs. They are as follows:

- 1. **Limited Number This Year.** Proceed with a limited number (approximately 15) of those eligible pockets that are sparsely populated; require little in the way of City services to be completed this year with existing staff resources, but would require approximately \$25,000 in non-personal costs.
- 2. **All Sparsely Populated This Year.** Proceed with those eligible pockets that are sparsely populated, require little in the way of City services to be completed this year with existing staff resources. This option would require approximately one new planner and \$50,000 in non-personal costs to complete.
- 3. All Eligible, Five Years, State Extension. Start a multi year effort to initiate annexations of all the eligible pockets, focusing first on those that are sparsely populated and require little in the way of City services this calendar year, then proceeding to the larger pockets assuming that the State will extend the current annexation provision. This option would require approximately 3 FTE and \$375,000 in non-personal costs to complete. Staff estimates that it can process the annexation proposals for all the pockets of less than 150 acres with new one planner for three years with the non-personal costs spread over those three years. With less available staffing, the program would take longer to complete.
- 4. **All Eligible, Five Years, No Extension.** Start a five year effort to initiate annexation of all the eligible pockets focusing first on those that most benefit from the current annexation provision, and putting the sparsely populated eligible pockets at the end of the program, assuming that the State will not extend the current annexation provision. This option would require approximately 2 FTE and \$450,000 in non-personal costs to complete. The higher level of staffing for this option is due to the added processing time required because of the elimination of the streamlined process. This would allow property owners and residents to protest the proposed annexations. Costs for any elections are not accounted for in this scenario as they are variable, but also substantial.
- 5. **All Eligible This Year.** Proceed with an extensive effort to initiate annexations for all the eligible pockets, focusing first on those that are easy to start the program then proceeding to the more complicated pockets all to be completed by the end of this year. This option would require redeployment of the annexation staff person full time, an additional 3 FTE to assist, and \$263,000 in non-personal costs to complete.

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COORDINATION

This has been coordinated with the City Attorney's Office, the Fire and Police Departments; the Departments of Transportation, Parks, Recreation and Neighborhood Services, Environmental Services, Public Works, Library, and the Redevelopment Agency. A working group has been established with the operating departments participating to ensure adequate coordination during and after the annexation efforts.

COST IMPLICATIONS

The processing of annexations will require currently unbudgeted resources to process the prezoning the subject areas, prepare necessary legal descriptions, perform community outreach and process the annexations. The General Fund is the main source of funding this project. A number of the pockets are within Redevelopment Agency areas and could qualify potentially for Redevelopment Agency funding of the annexation effort. Staff is proposing that the staff and non personal costs be considered for addition to the budget starting with FY 06-07 budget.

The impact of annexation of County pockets to the City would include operational costs to provide direct services to the new areas such as emergency services provided by the Police and Fire Departments, demands by residents and businesses for street maintenance, code enforcement, recreational and library services. There is a significant potential cost to fund capital improvements that City residents receive, but the County never required at the time of development nor provided through its Capital Improvement budget process. The amount of these costs has not been quantified to date, by neither the County nor City staff.

CEQA

2020 General Plan EIR Resolution #65459

JOSEPH HORWEDEL, ACTING DIRECTOR Planning, Building and Code Enforcement

(408) 535-7800

Attachments:

Pocket Annexation Alternatives Letter to Del Borgsdorf LAFCO Pocket Letter County Pocket Maps

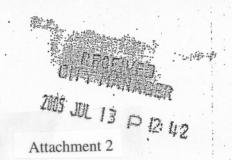
Pocket Annexation Alternatives

| | One | Two | Three | Four | Five | |
|------------------------------|--------------------------------|------------------------|--|---|-----------------------|--|
| Pockets Annexed Type | Limited Sparsely Populated. | Sparsely Populated. | All < 150 acres Starting w/ Small Sparsely Populated. | All < 150 acres Starting w/ Large Inhabited | All < 150 acres | |
| Pockets Annexed | 15 | 30 | 69 | 69 | 69 | |
| Time Frame | One Year | One Year | Three Years | Five Years | One Year | |
| Annexation Staff Required | Current Staff. | Current plus 1 FTE | Current plus 1 FTE | Current plus 2 FTE | Current plus 3 FTE | |
| Total Non Personal Req'd | \$25,000 | \$50,000 | \$375,000 | \$450,000 | \$263,000 | |

County of Santa Clara

Office of the County Executive

County Government Center, East Wing) West Hedding Street an Jose, California 95110 (408) 299-5105





July 6, 2005

Del Borgsdorf, City Manager 801 North First St. San Jose, CA 95110-1704

Dear Mr. Borgsdorf:

The Board of Supervisors has agreed to facilitate the island annexations by subsidizing the cities' cost of Surveyor's Office mapping and also to pay the Board of Equalization filing fees due on submittal of the approved annexations. In addition, the Roads Department will provide street improvements in the areas annexed.

To support these activities, the County has allocated up to \$700,000. In return for our contribution to the annexation efforts, the County will need to see a commitment from each city before mapping begins. Attached is an official mapping request form prepared by LAFCO staff. The form allows the city to indicate the islands on which the council will be proceeding and request mapping and surveyors reports. The County is asking that a minimum of 30 days be allowed for the surveyor's work. The request will be signed by the Mayor and City Manager. The County will subsidize the Surveyor's cost for those islands that proceed to annexation.

With regard to road improvements, the intent is for the work to be done after annexation. City public works directors should work with the County Roads Department to determine how that will be accomplished. Please contact Michael Murdter, Director of Roads and Airports, at 573-2400.

While LAFCO staff will be the point of contact for the annexations, the County is available to work with cities to ensure this process goes well. Please contact Jane Decker, Deputy County Executive, at 299-5116 with questions.

Sincerely

Pete Kutras

County Executive

Cc: Board of Supervisors
Jane Decker, Deputy County Executive
Michael Murdter, Director, Roads and Airports
Gwen Gee, County Surveyor

Attachment 3

November 9, 2004

TO:

City Council Members

Santa Clara County Board of Supervisors , City Managers and County Executive City and County Planning Directors

FROM:

Neelima Palacherla, LAFCO Executive Officer

SUBJECT:

City Annexations of Unincorporated Islands

Streamlined Process in State Law

I am writing on behalf of the Local Agency Formation Commission of Santa Clara County (LAFCO), to inform you about the changes in state law regarding city annexations of urban unincorporated islands.

New Law Increases Eligible Island Size from 75 acres to 150 acres

Currently, state law allows cities to annex urban unincorporated islands that are 75 acres or less and that meet certain criteria without requiring protest proceedings or elections. Recent legislation (SB 1266) signed by the Governor, will change the 75-acre requirement to 150 acres. This change will become effective on January 1, 2005 making it possible for more islands to qualify for this streamlined annexation process.

Background

Generally, the annexation law allows residents and/or landowners within the annexation area to protest the annexation. If there is less than 25% protest, the annexation passes. A protest level of 50% or more terminates the annexation. If the protest level is between 25 and 50%, an election must be held. A majority vote is then required for the annexation to be successful.

In 2000, the state legislature, recognizing the inherent inefficiencies of urban unincorporated islands, and in an effort to encourage their annexation, allowed for a simplified annexation process for the islands. AB 1555 allowed annexations of urban unincorporated islands that are 75 acres or less and that meet certain

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criteria to be approved without protest or election. The 75-acre requirement will be changed to 150 acres on January 1, 2005, when SB 1266 becomes effective.

Criteria for Streamlined Island Annexation Process

As per Government Code Section 56375.3, island annexations may be approved without protest or elections if all of the following criteria are met:

- Annexation is proposed by resolution of the annexing city.
- The island is 150 acres or less.
- The island is surrounded or substantially surrounded by the annexing city or by the annexing city and adjacent cities.
- The island is not a gated community where services are currently provided by a community service s district.
- The island is substantially developed or developing based on the availability of public utility services, presence of public improvements or the presence of physical improvements on the parcels within the area.
- The island is not prime agricultural land as defined in §56064.
- The island is receiving benefits from the annexing city or will benefit from the city.
- The island was not created after January 1, 2000.

Limited Time Period for Using Streamlined Annexation Process

This streamlined process without protest and election requirements is available only for a limited time period -- between January 1, 2000 and January 1, 2007. However, after January 1, 2007, not all provisions under this section expire. After January 1, 2007, protest proceedings will be required for these annexations but elections will not be needed. That is, if a majority protest is not received to defeat the annexation proposal, the annexation is approved without an election. (§57080(b))

For More Information

If you have any further questions regarding this process or if you would like to discuss potential island annexations within your city, please do not hesitate to contact me at (408) 299-5127 or Dunia Noel, LAFCO Analyst at (408) 299-5148.

ISLAND ANNEXATION MAPPING REQUEST FORM

| CITY: | |
|---|--|
| initiation of island annexations with Government Code section 56375.3. | directed staff to prepare nin the city under the provision of This section allows for an island annexation lize this section, the annexation must be |
| | proceedings for the annexation of islands on e necessary mapping and Surveyor's Reports |
| for the following islands by | . (Please note that the County num of 30 days to provide appropriate maps |
| Title of Annexations: | |
| 1 | 6 |
| 2 | |
| 3 | |
| 4 | 9 |
| 5 | |
| Please attach maps showing genera | l location of each of the islands listed above. |
| | at the City if the County Surveyor's Office |
| Map preparation and review costs a understands that County will waive completed, otherwise City will be b | are \$2,000 plus staff time at \$115/hr. City e these costs if the island annexation is illed for the cost. |
| Mayor: | City Manager: |
| Signature: | Signature: |
| Date: | Date: |
| Return to: LAFCO of Santa Clara | County |

70 W. Hedding Street 11th Floor, East Wing San Jose, CA 95110

San Jose

Total Urban Pockets: 87

Pockets < 150 acres: 79

Pockets > 150 acres: 8

Santa Clara County Urban Pockets

Santa Clara County Planning Office April 11, 2005

